

City of Concord Planning Board
January 18, 2023
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The regular monthly meeting of the City Planning Board was held on November 16, 2022, in City Council Chambers, in the Municipal Complex, at 37 Green Street, at 7:00 p.m.

Attendees: Chairman Richard Woodfin, Vice-Chair Carol Foss, Councilor Byron Champlin, Members Amanda Savage, Matthew Hicks, Jeff Santacruce, and Teresa Rosenberger (Ex-Officio for City Manager)

Absent: Councilor Erle Pierce, Members David Fox, and Susanne Smith-Meyer, Alternates Chiara Dolcino and Frank Kenison

Staff: Heather Shank (City Planner), Beth Fenstermacher (Assistant City Planner), Alicen Twardosky (Administrative Specialist), and José Lovell (Associate City Engineer).

1. Call to Order

Chair Woodfin called the meeting to order at 7 p.m.

2. Roll Call

Chairman Richard Woodfin, Vice-Chair Carol Foss, Councilor Byron Champlin, Teresa Rosenberger (Ex-Officio for City Manager), Matthew Hicks, Amanda Savage, and Jeff Santacruce

3. Approval of Meeting Minutes

December 21, 2022 Minutes

On a motion made by Mr. Santacruce, seconded by Mr. Hicks, the Board voted unanimously to approve the December 21, 2022, Planning Board Meeting Minutes, as written.

Mr. Champlin, Ms. Foss, and Ms. Rosenberger recused themselves due to inattendance.

4. Agenda Overview

On a motion made by Councilor Champlin, seconded by Vice-Chair Foss, the Board voted unanimously to postpone agenda items 7E and 7F at the request of the applicants until the February 15th meeting.

5. Design Review Applications by Consent

- 5A. John Lemanski, on behalf of Nouria Energy, requests ADR approval for a new 86 sf internally illuminated panel in a freestanding sign and a new 51.65 sf non-illuminated wall sign at 167 Loudon Road in the General Commercial (CG) District

On a motion made by Councilor Champlin, and seconded by Vice-Chair Foss, the Board voted by consent to approve the application subject to ADR stipulation that that the backdrop of the freestanding sign be all blue for consistency, and that the size and location of text on the wall sign be rearranged to emphasize the name of the business over the price. All in favor. Motion passes unanimously.

- 5B. Glen Schadlick, on behalf of Concord-Loudon Lamplighter Plaza, requests ADR approval for replacement of a 46 sf internally illuminated panel in a freestanding sign at 133 Loudon Road, in the General Commercial (CG) District

On a motion made by Councilor Champlin, and seconded by Vice-Chair Foss, the Board voted by consent to approve the application as submitted.

Public Hearings

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6. Design Review Applications

- 6A. Tom Wilson, on behalf of Remi Hinxhia, requests ADR approval for construction of a balcony at 58 Pleasant Street in the Civic Performance (CVP) District. (2022-81)

Ms. Shank clarified that this item was postponed at the December meeting because there was no one to present the application and there were questions. Ms. Shank shared follow up from the applicant and Code office, including that there are no Code requirements for the door since it is not used as egress.. Chairman Woodfin opened the public hearing. The applicant was not present.

Mr. Champlin asked if eliminating the sunburst element was considered. Chairman Woodfin stated the color matches the existing siding of the house and doesn't think it is going to be removed completely. It doesn't appear to be of architectural significance.

With no additional comments from staff, members of the Board, or public, Chairman Woodfin closed the public hearing.

On a motion made by Mr. Hicks, seconded by Mr. Santacruce, the Board voted to approve as submitted. The motion passed unanimously.

- 6B. Sarah Chessman, on behalf of Osborne's Farm & Garden Center, requests ADR approval for replacement of a 22 sf internally illuminated wall sign and a 77.89 sf internally illuminated panel in a freestanding sign at 258 Sheep Davis Rd in the Gateway Performance (GWP) District.

Ms. Shank clarified that this had been pulled from consent at the request of the applicant. They were unable to attend the ADR meeting on January 3rd. They were not in favor of the ADR stipulation to have an opaque background.

Chairman Woodfin opened the public hearing. Thomas and Paul Osborne presented the application.

Osbornes has been an independent Agway dealer since 2000. Over the past year and a half, Agway had struggles, declaring bankruptcy. Osbornes is separating from Agway, requiring the need to remove the logo from their signage. ADR requested an opaque background rather than the submitted translucent background to reduce light pollution. Mr. Osborne stated this does pose a hardship. There is a cost increase of \$2,744.00 for the street sign and \$1,580.00 for the building sign totaling a quote increase of \$4,324.00. Their sign manufacturer is NH Signs out of Manchester, NH. Mr. Santacruce clarified that the signs haven't been ordered prior to approval. Mr. Osborne confirms that he hasn't had the new panels created, just quoted.

With no additional comments from staff, members of the Board, or public, Chairman closed the public hearing.

On a motion made by Chairman Woodfin, and seconded by Mr. Foss, the Board voted to approve the sign application as submitted. Motion passes unanimously.

- 6C. Glen Schadlick, on behalf of Budget Blinds & Inspired Drapes, requests ADR approval for a new 24 sf internally illuminated wall sign at 248 Sheep Davis Road, Building One in the Gateway Performance (GWP) District.

Ms. Shank clarified that this had been pulled from consent at the request of the applicant as well. They do not want an opaque background.

Chairman Woodfin opened the public hearing. No one presented the application.

With no additional comments from staff, members of the Board, or public, Chairman Woodfin closed the public hearing.

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On a motion made by Chairman Woodfin, and seconded by Mr. Hicks, the Board voted to approve the sign application as submitted. Motion passes unanimously.

7. Site Plan, Subdivision and Conditional Use Permit Applications

- 7A. Alexander Sellar on behalf of the NH Army National Guard presenting to the Planning Board for non-binding review in accordance with RSA 674:54. Proposed is a 4,713 square foot building addition to be used as a multi-purpose training area with supporting IT storage and office space at 24 Pembroke Road in the Institutional District. The project includes utility and walkway improvements and a decrease of eight parking spaces.

Chairman Woodfin reminded the Board that this is a 674:54 application so this is simply advisory.

Chairman Woodfin opened the public hearing. Joseph Persechino (Tighe & Bond, Civil Engineering Firm) presented the application. Also present were Chief Warrant Officer Ben Stevens and Alex Sellar (Tighe & Bond).

Mr. Persechino presented this as an addition to the State Military Reservation, Building M, fronting on Pembroke Road. Utilities and parking are within the limits of the State Military Reservation, with the exception of potential connection for a watermain on Pembroke Road, which is being worked on with the City separately. There is water on site but the connection may be needed due to accessibility of the pipe. The project is moving towards construction.

Mr. Santacruce noted that the existing plan shows three ADA spaces but there are only two being proposed. Mr. Persechino stated that the ADA accessibility is being met. Mr. Santacruce also noted a new crosswalk across the parking lot on the right but doesn't see a ramp for ADA connection. Mr. Persechino explained that the accessible route is not from that door. It is from the sidewalk just south of that. Because of the existing grades in that area, a ramp would not work there.

With no additional comments from staff, members of the Board, or public, Chairman Woodfin closed the public hearing.

The Board did not offer any recommendations.

- 7B. Matthew and Bronwyn Barnett request a Conditional Use Permit (CUP) to allow a second driveway where there is otherwise insufficient frontage for a second driveway at 22 Harvard Street in the Single Family Residential (RS) District (continued from December 21, 2022 public hearing).

Ms. Fenstermacher provided a staff update that the applicant was unable to attend last month's meeting. The applicants are requesting an additional driveway without sufficient frontage on Harvard Street for additional parking.

Chairman Woodfin opened the public hearing. Bronwyn Barnett (property owner) presented the application.

Ms. Barnett stated that the property has an existing driveway on the side of the house that is opposite from their front door. With small children it poses a struggle and safety concern. There is a larger safety component as they are located on a street directly before Tuckers Restaurant. Multiple vehicles and parking on the street cause blind spots. They would like to place a small permeable driveway on the same side as their mudroom entrance. Chairman Woodfin notes the ample space on the right side of the home, where the current driveway is. The proposed driveway on the left would be limited to space for one vehicle.

Mr. Hicks voiced that in these situations there is a precedent that the Board doesn't approve Conditional Use Permits. Mr. Hicks asked why they wouldn't discontinue the use of the driveway on the right. Ms. Barnett stated that it's because that is where the garage is and is unsure how that

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would even be possible. Mr. Hicks said that this poses a concern regarding curb-cuts because it causes conflicts with cars coming out of driveways onto the street. The City tries to reduce the number of curb cuts. Ms. Barnett restated the safety concerns she and their neighbor have with cars parking on the street. Chairman Woodfin noted that while he appreciates the safety perspective the applicant brought up, there is a 24-foot double-wide driveway on a small residential spot that currently exists and doesn't support adding or moving the driveway to a smaller location. He also noted the walkway to the back door that is from the current driveway location and two entrances on the proposed driveway side. Ms. Barnett assured the Board that the proposed driveway will not be for the campers she mentioned earlier. It will be for a vehicle.

Mr. Santacruce offered a synopsis of what had been presented. He suggested moving the current walkway closer to the house rather than causing another conflict point. Chairman Woodfin noted the property to be closer to Noyes Street and a dangerous location. Cars whip around that corner. Councilor Champlin concurs with Mr. Santacruce, noting that he did not see the option of a maintained walkway and finds that to be sufficient in protecting the children from the dangers of street traffic.

With no additional comments from staff, members of the Board, or public, Chairman Woodfin closed the public hearing.

On a motion made by Mr. Hicks, seconded by Mr. Santacruce, the Board voted to deny the application. All in favor. The motion passes unanimously.

- 7C. Andy Sanborn, on behalf of Big Step, LLC, requests Comprehensive Development Plan approval for a phased development to construct a charitable gaming hall, hotel, restaurant, and parking structure at 7 Break O' Day Drive in the Gateway Performance (GWP) District. Major Site Plan approval is also requested for Phase 1, which includes the gaming hall, restaurant, and microbrewery, along with Conditional Use Permit approval for disturbance of wetland buffers. (2022-59).

Chairman Woodfin opened the public hearing and addressed the public to clarify that the Planning Board's purview pertains specifically to the site, and not the permission of the use.

Nick Golon (TF Moran) and Andy Sanborn (Big Step, LLC) presented the application.

Mr. Golon explained that the proposal includes a sit-down restaurant and lounge, a charitable gaming hall, brew pub, hotel, conference center and events area. The Comprehensive Development Plan was shown, which was previously brought before the Board. The initial phase of the development consists of the 24,000 square foot gaming hall, lobby lounge, and associated gaming stations.

Chairman Woodfin noted that the project needed to be determined a Development of Regional Impact due to impacts to adjacent communities. Councilor Champlin motioned, seconded by Vice Chair Foss, to determine the application a Development of Regional Impact (DRI).

Mr. Sanborn defined charitable gaming. He explained that 35% of their gross revenue is given to a different charity every ten days. Examples Mr. Sanborn gave included homeless populations, those suffering from addiction, and veterans.

Mr. Golon reviewed the site plan. He noted that additional landscaping has been requested several times. This has been done and will be submitted to the City / Staff next week in preparation for the February 15th meeting. Reconstruction of Break O Day Drive to meet City standards is also required. Multiple meetings have been had with the City and DOT to scope a traffic study. The

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scope limits the traffic to the immediate vicinity of the facility as well as the ramps associated with 393.

Mr. Golon proposed having a discussion regarding a waiver for the sidewalk on Break O Day drive, whether to build one now or later.

Additionally, Mr. Golon pointed out a brick front along the westerly side of the building and a metal panel around the building that would match. They are scheduled to attend the Architectural Design Review meeting on January 31st.

The developers are working on an appropriate emergency access coming from the central isle of the parking lot for mass exodus and police and fire services. It does go through the City right of way and would need approval. Mr. Golon voices an issue with being asked to offer access to Loudon Road when they have no access / frontage to it.

Councilor Champlin addressed the applicants with a question of whether or not is a philanthropically based or profit based enterprise. Mr. Sanborn responded that it is profit based. Every charity that is supported throughout this process needs to be registered with the Charitable Trust as well as with the IRS. Councilor Champlin clarified his understanding that the philanthropic portion is a requirement of the State because casinos and slot machines are illegal in NH. Mr. Sanborn stated that the State recognized them as consultants that help charities raise money. Mr. Sanborn noted that is a legal limit of \$10 on all table games

Mr. Sanborn noted that there are nine owners in 12 to 15 operations across the State. Some have been granted approval but haven't opened or been built yet. New Hampshire has authorized up to ten licenses since May of 2020; three have been granted. Others currently in operation had their licenses prior to that date and were grandfathered.

Councilor Champlin asked how legislation filed in the current term, which would cap the number of charitable gambling sites in the State, would impact this project. Mr. Sanborn responded that there are currently six or seven bills that regulate locations within a 40-mile radius and what types of games are permissible within each development, however Mr. Sanborn already received his license

Mr. Santacruce voiced that Staff had not receiving the DOT traffic review. He notes that it's important that the documentation be provided because phase two is contingent upon these results. Mr. Golon indicated that they have it on record via email from the DOT that they did not see anything inherently that would cause issue and to follow up with them as the project continues. That email will be forwarded to Staff for their records.

Mr. Hicks confirms that this is in a Gateway Performance District and all uses being applied for are permitted uses. He noted that there are no variances, waivers, or Conditional Use Permits.

Ms. Shank clarified that the Board cannot deny the application based on not liking the use, since the use is permitted by the Zoning Ordinance. The use can be discussed; it is the Board's authority to place conditions on the application based on the use and any mitigating factors that may exist. The Board looks at traffic safety, crime, and other issues people are concerned about pertaining to the use. However, the Board does not have the authority to say the community doesn't want gambling; therefore, this is denied.

Public Comments:

Mark Hensley (Word of Life Fellowship) and Natalie Locke (abutter) spoke against the application. Mr. Hensley built the WOL fellowship on Old Loudon Road. Ms. Locke lives on Old Loudon Road. They voiced objections to the gaming operation being so close to the church, and several

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other churches. He asked whether the applicant would need to prove that there were indigenous burial grounds on the site. He expressed concern that the use will bring addiction, thievery, sex trafficking, prostitution, and drugs. The church that he is speaking for has children's camps and asked that the Planning Board be careful when changing a neighborhood. He feels there will be an increased need for law enforcement and fire protection. Mr. Hensley asked if thought had been given to hours of operation and whether or not the Board has the authority to put restrictions on times of operation. He feels proceeding with this project is dangerous. He strongly objects to this facility in this place at this time. Mr. Champlin asked Mr. Hensley what the distance is from this location to the WOL church. Mr. Hensley replied about a quarter mile. Mr. Champlin noted that Mr. Hensley wants an archeological study done.

Jim Harold attends 7th Day Adventist Church) voiced objection to the facility. He feels this area is low-income and will increase poverty levels and homelessness. He expressed concern regarding notification requirements and felt more people should have been notified sooner. Chairman Woodfin noted that abutters were notified according to the law.

Rick Gullooci is the Director of Finance at Pitco Frialator and manager of the current casino in Concord. Mr. Gullooci explains more about charitable gaming and noted that the applicant currently supports 36 different charities such as Lions Club, dog shelters, and other 501C3's. He has been in the business for about ten years. He clarified that the State caps betting limits. This is not like Vegas. Pamphlets are provided regarding gambling anonymous. When a player decides they are unable to stop themselves, self-exclusion is supported and measures are put in place limit / eliminate gambling by the individual.

Norman Roberge (treasurer for Lions Club and Dunbarton Historical Society), Vince Giambalvo and Sarah Wagner (Loudon Lions Club) voice excitement for the larger venue. They are encouraged by the fundraising this gaming institution has done. 100% of the money the Lions Club receives goes back into the community in the form of scholarships, food pantry donations, Veterans Home, and elderly housing. Andy and Laurie Sanborn (casino owners) have been extremely generous to charities. Mr. Giambalvo adds that this money raised also allows for them to assist families with vision and hearing tests, cancer screenings, and fighting hunger. Funds obtained help because what were once successful fundraising techniques are very hard now or even nonexistent.

Tim Robson is a Concord resident. He feels the proceeds of gambling to cause extreme economic suffering in some gamblers. He asks the Board to think about the pollution and environmental impact this brings. He likens the impact of this development to a manufacturing plant. Chairman Woodfin feels it is more likened to an office building.

Kevin Hart is the Pastor of Seventh Day Adventist Church. He feels the vicinity to the Route 106 Belmont casino to be too close, being closer than 25 miles. Mr. Hart says this could be the first thing you see of Concord from 202 as you enter from the East. He states we are inviting a lot of the same major problems Nashua and Manchester experience. He feels Concord is the last decent size city that feels rural. He asks the Board to consider the drinking and driving potential.

Brian Coggeshall, resident on Old Loudon Road, asks the Board to please consider the hours of operation and how they will impact the neighborhood. He lives about two houses down from the church on the same street, half mile away from the proposed casino site.

Patrice Meyers asked for clarification on the profit margin versus charitable contribution. Chairman Woodfin clarified for Ms. Meyers that 92% of profits go back to the gambler, 8% left is gross. 10% of that goes to State and 35% of that goes to charity. Ms. Meyers asked how the city will pay for the additional services needed with this increased population. The Board responded that property taxes should cover any City services and private protection / service would be the responsibility of the

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business owners. Mr. Hicks reminded Ms. Meyers that this business will pay taxes. Ms. Meyers asked who to address regarding the use of the building. Ms. Shanks clarifies this is determined by the Zoning Ordinance.

Cathy Bernhard, resident of Josiah Bartlett Road feels this would be a huge change to the area regardless of it being a mixed use / commercial area. Upon inquiring about their wetland application Ms. Shank clarified that regulation of wetlands is at the state level with DES and not the purview of this Board. It is Ms. Shank's understanding that an application has been filed but not been approved at this time. Ms. Bernhard feels there is a gross understatement of the impact this will have on the area and doesn't feel this is the right place or time given the population and the percentage of those that gamble.

Jason Belyer, a resident of Concord, feels the Sanborns are responsible business owners. Mr. Belyer asked the Board to consider all the restaurants currently in the area that are open until "last call." He does agree that there is a viable concern environmentally that should be looked into but other concerns are conjecture. He thinks it is a great location and that morally there is no issue.

Bruce Currie, a resident on Josiah Bartlett Road, reiterated others' objections he has heard thus far. He feels the source of funding from gambling is inherently regressive. His concern is more Phase Two, being 100,000 square feet for the hotel and parking garage. He feels this will be one of the largest buildings in the City and being in a gateway district, will have tremendous visual impact.

Jay Smith, a resident of the neighborhood, takes issue with the size of the building and the safety concerns, i.e. fire dangers. He asked what measures are being taken to ensure water supply is enough. Regarding the "last call" statement previous, Mr. Smith feels The Pit Road Lounge to be an inaccurate representation given the vicinity to homes versus businesses. He feels this development is too close to churches.

Fisto Nalayishimiye represented New American Youth from the Heights on Loudon Road. He feels this is public safety and welfare concern. Mr. Nalayishimiye feels casinos decrease property values and increase drinking and driving. He feels that even though it brings more jobs, they are minimum wage, not bringing people out of the poverty level, and the hours of operation are not optimal for families. He stated this is a critical moment for Concord to consider if this is what we want to put as a tourist attraction in the City.

Aaron Fracht-Monroe, a resident of Concord, asked if there were any renderings on signage and what that will look like from various areas of Concord. Chairman Woodfin explained that this question will be addressed when the applicant submits their sign application. Mr. Fracht-Monroe asked that the Board ensure that the environmental aspects, i.e. solar use, of this project be mitigated by a lead-certificated professional.

Mr. Sanborn and Mr. Golon returned to the table. Mr. Golon confirmed that a Department of Environmental Services application has been submitted. Mr. Golon stated that the Conservation Commission has been met with at least twice to discuss mitigation. The wetland that is being affected is runoff that is being discharged under 393. The elevation in the driveway is 356 feet. The elevation of the culvert on the far side of the property is around 370 feet. The northwest corner is roughly 80 feet above the culvert, a significant grade difference. Mr. Stanley states a functional analysis has been done. The wetland area has been tested for wildlife. The evaluation found this area to be one of the lowest valued areas they've seen. It is more similar to a drainage ditch. This runoff will be better directed, not eliminated.

Chairman Woodfin addressed the Lions Club's use of funds and how that is governed. Mr. Sanborn stated that any charities donated to are selected by the State of NH and Charitable Trust. Some of

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the criteria include being a non-profit for two years, include a mission, be registered with the IRS and Charitable Trust company. The funds are overseen to ensure they are being appropriately allocated. Some examples of charities are: transitional housing, animal welfare, veterans' issues, education, etc. Contribution literature and contact information are posted within the current facility.

Chairman Woodfin addressed the proximity of the Draft Restaurant on Main Street (also gaming) and it being so close to the proposed location. Mr. Sanborn replied that facilities that were already functioning at the time of that legislation were grandfathered in, such as the Draft on Main Street and Belmont Casino.

Hours of operation are dictated by the State of NH. The current proposal is not proposing to operate to the excess of permissions. They are open from 4 p.m. to 1 a.m. Monday through Friday, and noon to 1 a.m. on Saturday and Sunday.

Chairman Woodfin asked about water and sewer capacity. Mr. Golon stated that the first phase has more than ample water, which is expected for the second phase as well. These issues are ongoing with Staff as part of the process.

Mr. Golon stated that traffic volumes are part of the traffic study and will determine whether or not traffic lights will be needed.

They are required to file an application with the State Historical Preservation Office for a project of this size. Determining indigenous burial grounds is part of the requirement for the Alteration of Terrain (AoT) permit. An archeologist has been retained.

Ms. Savage asked if the Draft will remain open being so close to this facility. Mr. Sanborn said they have a lot of locals who walk from home. Secondly, the two facilities are not permitted the same games. Ms. Foss sought clarification on how multiple facilities can be so close with the current legislature. Mr. Sanborn reiterates that grandfathering allows the same gaming styles within the 40-mile radius. Mr. Hicks did a quick search of the General Court website and referenced house bill 220, and Senate bill 51 for the public to answer some questions.

With no additional comments from staff, members of the Board, or public, Chairman Woodfin closed the public hearing.

On a motion made by Chairman Woodfin, seconded by Ms. Rosenberger, the Board vote to approve the Comprehensive Development Plan as submitted. All in favor. Motion passed unanimously.

Councilor Champlin confirmed whether or not the Engineering Department has been satisfied provided. Ms. Shanks clarified that the Determination of Completeness simply stated that they've given us the information to review the application. The public hearing for the site plan application would be set for next month. Mr. Santacruce confirms that if things arise during that public hearing process on the site plan that effect the Comprehensive Development Plan there is the possibility of going back and revisiting. Ms. Shank responded that if the site plan requires major changes, the CDP could change as well. The CDP could also come back to the Board for a revision if Phase 2 changes significantly.

Chairman Woodfin motioned, seconded by Mr. Hicks, that the application be determined complete and to set the public hearing for February 15th. The motion passed unanimously. This is a Development of Regional Impact so surrounding towns will be notified, including Loudon and Pembroke. Ms. Shank will follow up to identify other communities that should be noticed.

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- 7D. Wilcox & Barton Inc., on behalf of Morrill Mill Pond LLC, requesting Major Site Plan approval for structures of approximately 2200 sf and 2300 sf for the purpose of a restaurant with drive through and retail space, and Conditional Use Permit approval for the disturbance of wetland buffers at 10 Whitney Road in the Industrial (IN) District (continued from December 21, 2022 public hearing).

Chairman Woodfin opened the public hearing. Erin Lambert (Wilcox and Barton) representing Morrill Mill Pond, LLC and Attorney John Arnold (Orr & Reno) presented the application.

Ms. Fenstermacher stated that Staff had concerns with onsite circulation. The applicant had presented an alternative at last month's meeting and the Board placed a continuance to afford Staff time to review them. Staff responded to this revised plan with additional comments. Staff still has a concern with the intense vehicular use of the property, and the entrance drive has such a short throat that to the Traffic Engineer has concerns will cause vehicles to back up onto Whitney Road. Staff added a recommended supplemental condition requiring right of way improvements if back-ups are caused by the use after Certificates of Occupancy have been received for the Merchant's Way development. , The developer would be responsible for changes to the right of way or internal circulation of the site. The developer was not in favor of the condition.

Ms. Lambert stated they've been working on site circulation and presented a plan in response to the most recent round of staff comments. The plan has been revised to show angled parking conducive to a one-way traffic pattern but with a wider driveway width to accommodate emergence and delivery truck movements, and they have added directional signage for guidance with no confusion. Ms. Lambert talked through other changes to the internal site circulation to improve way finding and prevent vehicles from going in the wrong direction. Based on their queue analysis, they feel there is a sufficient queue for each business. She feels the plan meets or exceeds expectations of vehicles at peak times. The analysis shows that the traffic on Whitney Road will allow free flow. She also added the reason that they are not using the bypass lane around the restaurant as part of the circulation is because it is narrow and not designed or intended to support full travel consistently.

Attorney Arnold noted that the condition added by staff appears to extend indefinitely and gives the City Engineer sole unilateral discretion to require changes be made to this site to address any perceived problems that may arise. He feels this condition isn't practical and is not attractive for future Lessees as it is like asking for a blank check from the developer without knowing what changes may be required. Attorney Arnold feels that Staff and VHB have already made clear that this application meets requirements. He claims the condition goes against the Planning Board's decision and the laws regarding vesting.

Ms. Fenstermacher clarified that the intent was not to give the City unilateral or indefinite authority. She notes that there are two major developments being constructed by this applicant happening across the street from each other, and there may be impacts to the travel lanes of Whitney Road due to the intensity of the use on this site. Staff is still uneasy not knowing what the future build-out conditions are, considering the intensity of this use on a very small site with very little space between queuing lanes and the road. She noted that this is not precedent setting as there are similar conditions placed on other properties in the City.

Ms. Shank clarified that the language does not indicate indefinite unilateral control by the City. The condition attempts to place the responsibility for the impact created on the developer. The condition states that up until a year after the final CO for that development, the developer should be evaluating the stacking lanes and fix a back-up if it needs fixing. Ms. Rosenberger felt this condition to be onerous and that the precedent is being set that the City is mandating something rather than working together with the applicant. Ms. Rosenberger would like this condition be removed from the recommendations.

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Mr. Hicks asked if it is legal to queue in a roadway. Ms. Shank noted that once a development is built, it can be very difficult to address problems created after the fact.

Laurie Rauseo from Morrill Mill Pond LLC stated that a traffic study was already completed and is based on the full build out. She also stated that they have met the City's regulations with regards to the number of required queuing spaces.

Mr. Santacruce stated that the "precedent" for requiring a condition to monitor and address backups onto a City right of way is the issue of safety.

Ms. Shank noted that it is the purview of the Board to put conditions for offsite improvements on a project if needed. Ms. Fenstermacher clarified that the Site Plan Regulations state a minimum number of queue spaces required and that more spaces may be required given the nature of the site. Ms. Shank stated that Whitney Road is planned to be a significant collector with intense development on it. Ms. Rosenberger feels it is the City's responsibility to note and address safety issues. Ms. Lambert states the developer concurs with the Staff's desire for free flow into the site. They felt the order window exceeds the standard. She stated that when the queue is full, people will find parking spots and enter the store.

An alternative condition was drafted to minimize the responsibility of the applicant but still acknowledge that problems may arise that need to be addressed by the developer in conjunction with City staff.

Mr. Santacruce asked for the signs to be symbols rather than words. Not everyone is able to read English. He also suggested that the developer paint a double yellow line and the crosswalk within Whitney Road. The applicant seeks Engineering feedback on this.

With no additional comments from staff, members of the Board, or public, Chairman Woodfin closed the public hearing.

On a motion made by Councilor Champlin, and seconded by Mr. Santacruce, the Board voted unanimously to:

4.1 Grant Architectural Design Review approval for the buildings, as submitted.

4.2 Grant the Conditional Use Permit (CUP) in accordance with Section 28-4-3(d) for 3,604 sf of temporary impacts, and 1,195 of permanent impacts to the Buffer to Wetlands.

4.3 Grant Major Site Plan approval for the construction of two new buildings for a restaurant (2,232 sf) and retail space (2,500 sf), parking areas, and drive-throughs for both buildings, subject to the following precedent and subsequent conditions noted below: provide double yellow striping and stripe the crosswalk, subsequent applicant will identify to all tenants that the largest size vehicle is SU30.

(a) Precedent Conditions – to be fulfilled within one (1) year and prior to sign off by the Clerk and Chair of the Planning Board and issuance of any building permits, or the commencement of site construction, unless otherwise specified:

(1) Address all review comments to the satisfaction of the Planning Division and Engineering Services Division.

(2) Conditional Use Permit(s) granted are to be noted and fully described on the plan including date granted and applicable Section number(s) of the Zoning Ordinance. Should the Board vote to deny the Conditional Use Permit(s), applicant shall comply with said submission requirement(s).

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(3) Final plans shall be signed and sealed by the NH Registered Land Surveyor, Landscape Architect, Architect, Wetland Scientist, and Professional Engineer.

(4) Applicant shall be required to paint a double yellow line on Whitney Road from the roundabout to the entrance of the proposed development as well as the crosswalk in Whitney Road, subject to agreement with the City Engineer.

(5) Submit three (3) copies of final plans for sign off by the Clerk and Chair of the Planning Board.

(b) Subsequent Conditions – to be fulfilled as specified:

(1) Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.

(2) A pre-construction meeting shall be required prior to the start of any construction activities onsite. The applicant shall pick up one (1) set of signed plans at the Planning Office to make copies for the pre-construction meeting.

(3) Prior to the commencement of clearing, Applicant shall flag the limits of clearing for Staff review and approval.

(4) The wetland buffers shall be marked prior to the commencement of construction activities, in accordance with Section 36.28 of the Site Plan Regulations.

(5) Prior to issuance of the final Certificate of Occupancy or final construction sign-off, as-built drawings shall be provided to the City Engineer in accordance with Section 12.09 of the Site Plan Regulations. The as-built drawings shall be surveyed on NH State Plane coordinates and NAVD 88 Datum.

(6) The Applicant or their successors shall be responsible for the regular maintenance of all plantings and other landscape features. Plant materials shall be maintained alive, healthy and free from pests and disease.

(7) For a period of 12 months after the CO is received for both uses on the site, the Developer shall continue to monitor vehicular circulation to ensure that it is working as planned and not causing back-ups onto Whitney Road. If there are back-ups on to Whitney Road the Applicant and the City will work together to reach a mutually agreeable solution.

(8) The Applicant will notify all tenants that the largest size delivery vehicle that the site can accommodate is a Single Unit Truck (SU-30)..

- 7E. Hayner/Swanson, LLC, on behalf of Brady Sullivan Properties LLC, requests Major Site Plan and Conditional Use Permit (CUP) approval for conversion of existing buildings into an 80-unit multifamily complex at 11 Stickney Ave in the Opportunity Corridor Performance (OCP) District. The applicant has requested to be postponed to the February 15th Planning Board meeting. (2022-78).

Postponed until the February 15th Planning Board meeting.

- 7F. Michael Durant, on behalf of ARCK TEJ Realty, LLC, requests Minor Site Plan and Conditional Use Permit (CUP) approval to allow the use of a gas station at 188 Pleasant Street in the Neighborhood Commercial (CN) District. The Applicant has requested to postpone to the February 15th Planning Board meeting. (2022-67).

Postponed until the February 15th Planning Board meeting.

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Other Business

8. Any other business which may legally come before the Board.

Ms. Shank notified the Board that ADR recommendations intended to be placed as conditions of approval by the Board have not been recognized as such by the Code office, they have been interpreted as suggestions. To improve clarity between the Board and Code, Ms. Shank let the Board know that moving forward, the language for motions by ADR intended to be conditions will be “ADR recommends approval subject to the stipulation...”

Comments that are not intended to be conditions placed by the Board will be referred to as “suggestions.” Ms. Shank noted that the lack of clarity comes from the fact that ADR does not have the authority to make “conditions”, only the Planning Board does.

Adjournment

At the request of Chairman Woodfin, Mr. Hicks made a motion, seconded by Councilor Champlin, to adjourn the meeting. The motion passed unanimously at 10:28 PM.

TRUE RECORD ATTEST:

Alicen Twardosky
Administrative Specialist II